IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

ABRAHAM FARAGOZA,
and all others similarly situated,

Plaintiffs,

v. C.A. No.: 7:16-cv-672

COLLECTIVE ACTION

S.E.S.A. FLEET SERVICES, L.L.C.,
CHRIS VELA, and,
FLORENTINO VELA III,

Defendants.

_____________________________________/

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, ABRAHAM FARAGOZA (hereinafter sometimes referred to as "Plaintiff"), and others similarly situated, by and through his undersigned counsel, hereby sues Defendants, S.E.S.A. FLEET SERVICES, L.L.C., CHRIS VELA, and FLORENTINO VELA, III (hereinafter sometimes referred to collectively as "Defendants"), and in support thereof states as follows:

INTRODUCTION

1. This is a collective action by Plaintiff, and others similarly situated, against his employers for unpaid wages pursuant to the Fair Labor Standards Act, as amended, 29 U.S.C. § 201, *et seq*. Plaintiff seeks damages for unpaid overtime, liquidated damages, injunctive relief, declaratory relief, and a reasonable attorney's fee and costs.

JURISDICTION

2. This claim is properly before this Court pursuant to 28 U.S.C. § 1331, since this claim arises under federal law, and by the private right of action conferred in 29 U.S.C. § 216(b).

VENUE

3. Venue is proper in this district under 28 U.S.C. § 1391(b)(1) because Defendant, S.E.S.A. FLEET SERVICES, L.L.C., has offices Hidalgo County, Texas.

THE PARTIES

4. Plaintiff is an individual residing in Bee County, Texas.

5. Plaintiff, ABRAHAM FARAGOZA, was employed by Defendants from February 2015, to August of 2016 a "Mechanic." Some of Plaintiff's principle duties were to repair and maintain fleet equipment and vehicles for Defendant's customers.

6. Defendant, S.E.S.A. FLEET SERVICES, L.L.C., is a limited liability corporation existing under the laws of the State of Texas and maintains offices in Weslaco, Texas.

7. Defendant, S.E.S.A. FLEET SERVICES, L.L.C., operates a company that primarily provides maintenance and repair services for the oil and gas industries

throughout the United State of America and is an employer as defined by 29 U.S.C. § 203(d).

8. Defendant, S.E.S.A. FLEET SERVICES, L.L.C., has employees subject to the provisions of 29 U.S.C. § 206 in the facility where Plaintiff was employed.

9. At all times material to this complaint, Defendant, S.E.S.A. FLEET SERVICES, L.L.C., employed two or more employees and had an annual dollar volume of sales or business done of at least $500,000.00.

10. At all times material to this complaint, Defendant, S.E.S.A. FLEET SERVICES, L.L.C., was an enterprise engaged in interstate commerce, operating a business engaged in commerce or in the production of goods for commerce as defined by § 3(r) and 3(s) of the Act, 29 U.S.C. §§ 203(r)-(s).

11. Defendants, CHRIS VELA and FLORENTINO VELA, III, are individuals residing in Weslaco, Texas.

12. Defendants, CHRIS VELA and FLORENTINO VELA, III, are individuals who at all times relevant to this matter acted directly or indirectly in the interest of Defendant, S.E.S.A. FLEET SERVICES, L.L.C., in relationship to Plaintiff, and others similarly situated; therefore, are joint employers as defined by 29 U.S.C. § 203(d).

13. Defendants, CHRIS VELA and FLORENTINO VELA, III, (1)

possessed the power to hire and fire the employees, (2) supervised and controlled employee work schedules or conditions of employment, (3) determined the rate and method of payment, and (4) maintained employment records. Therefore, are statutory employers under the FLSA.

14. At all times material to this Complaint, Defendants were the employers of the Plaintiff, and others similarly situated, and, as a matter of economic reality, Plaintiff was dependent upon Defendant for his employment.

15. Additionally, Plaintiff, and others similarly situated, was individually engaged in commerce and produced goods for commerce and his work was directly and vitally related to the functioning of Defendant's business activities. Specifically, Plaintiff, and others similarly situated, performed work relating to the production of oil and gas and the movement of goods for interstate commerce.

16. Plaintiff has retained the law firm of Ross Law, P.C., to represent him in this action and has agreed to pay said firm a reasonable attorney's fee for its services. Plaintiff has entered into a valid contract with Ross Law, P.C., and has appointed the undersigned counsel to be his sole agent, attorney-in-fact, and representative in this suit, exclusive of all other parties, including Plaintiff/Plaintiffs. To avoid tortious interference with Plaintiff's obligations to his attorneys in this suit, all communications concerning this suit must be made by Defendants and Defendants' attorneys solely to and through the undersigned counsel. Plaintiff's

contract with an representation by the undersigned attorney gives rise to a claim for reasonable and necessary attorney's fees that Plaintiff is entitled to collect against Defendants pursuant to 29 U. S. C. § 216(b).

VIOLATION OF THE OVERTIME PROVISIONS OF THE FAIR LABOR STANDARDS ACT

17. Plaintiff re-alleges and incorporates herein the allegations contained in paragraphs 1 through 16 above.

18. Throughout the employment of Plaintiff, and others similarly situated, Defendant repeatedly and willfully violated Sections 7 and 15 of the Fair Labor Standards Act by failing to compensate Plaintiff at a rate not less than one and one-half times his regular rate of pay for each hour worked in excess of 40 in a workweek.

19. Specifically, Plaintiff, and all others similarly situated, were only paid their hourly rate for each hour worked, without being paid the additional half-time premium for their overtime work.

20. The work schedules for the Plaintiff, and all others similarly situated, required them to work 12 hour shifts, 7 days a week, during numerous workweeks.

21. Pending any modifications necessitated by discovery, Plaintiff preliminarily defines this Class as follows:

> ALL CURRENT OR FORMER EMPLOYEES OF S.E.S.A. FLEET SERVICES, L.L.C., WHO WERE EMPLOYED AS MECHANICS THROUGHOUT THE UNITED STATES AND WERE NOT PROPERLY COMPENSATED FOR ALL OVERTIME HOURS WORKED.

22. This action is properly brought as a collective action for the following reasons:

a. The Class is so numerous that joinder of all Class Members is impracticable.

b. Numerous questions of law and fact regarding the liability of Defendants, are common to the Class and predominate over any individual issues which may exist.

c. The claims asserted by Plaintiff are typical of the claims of Class Members and the Class is readily ascertainable from Defendants' own records. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

d. Plaintiff will fairly and adequately protect the interests of Class Members. The interests of Class Members are coincident with, and not antagonistic to, those of Plaintiff. Furthermore, Plaintiff is represented by experienced class action counsel.

e. The prosecution of separate actions by individual Class Members would create a risk of inconsistent or varying adjudications with respect to individual Class Members which would establish incompatible standards of conduct for Defendants.

f. The prosecution of separate actions by individual Class Members would create a risk of adjudications with respect to individual Class Members which would, as a practical matter, be dispositive of the interests of the other Class Members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

g. Defendants acted on grounds generally applicable to the Class, thereby making appropriate final injunctive relief with respect to the Class as a whole.

23. For the foregoing reasons, Plaintiff seeks certification of an FLSA "opt-in" collective action pursuant to 29 U.S.C. §216(b) for all claims asserted by Plaintiff

because his claims are nearly identical to those of other Class Members. Plaintiff and Class Members are similarly situated, have substantially similar or identical job requirements and pay provisions, and are subject to Defendant's common practice, policy or plan regarding employee wages and hours.

24. In addition to the named Plaintiff, numerous employees and former employees of Defendants are similarly situated to Plaintiff in that they have been denied overtime compensation while employed by Defendants.

25. Defendants' policy of not paying overtime is company-wide and "Mechanics," throughout the United States, employed by Defendants during the three years prior to the filing of this action have been deprived of overtime, similarly to the Plaintiff.

26. Plaintiff is representative of these other employees and is acting on behalf of their interests as well as Plaintiff's own interests in bringing this action.

27. Defendants either knew about or showed reckless disregard for the matter of whether their conduct was prohibited by the FLSA and failed to act diligently with regard to their obligations as employers under the FLSA.

28. Defendants failed to act reasonably to comply with the FLSA, and so Plaintiff, and all others similarly situated, are entitled to an award of liquidated damages in an equal amount as the amount of unpaid overtime pay pursuant to 29 U.S.C. § 216(b).

29. The acts described in the above paragraphs violate the Fair Labor Standards Act, which prohibits the denial of overtime compensation for hours worked in excess of 40 per workweek.

30. As a result of Defendants' unlawful conduct, Plaintiff, and all others similarly situated, is entitled to actual and compensatory damages, including the amount of overtime which was not paid that should have been paid.

31. Plaintiff, and all others similarly situated, is entitled to an award of reasonable and necessary attorneys' fees, costs, expert fees, mediator fees and out-of-pocket expenses incurred by bringing this action pursuant to 29 U.S.C. § 216(b) and Rule 54(d) of the Federal Rules of Civil Procedure.

WHEREFORE, Plaintiff, ABRAHAM FARAGOZA, and all others similarly situated, demand Judgment against Defendants, jointly and severally, for the following:

a. Determining that the action is properly maintained as a class and/or collective action, certifying Plaintiff as the class representative, and appointing Plaintiff's counsel as counsel for Class Members;

b. Ordering prompt notice of this litigation to all potential Class Members;

c. Awarding Plaintiff and Class Members declaratory and/or injunctive relief as permitted by law or equity;

d. Awarding Plaintiff and Class Members their compensatory damages, service awards, attorneys' fees and litigation expenses as provided by law;

e. Awarding Plaintiff and Class Members their pre-judgment, moratory interest as provided by law, should liquidated damages not be awarded;

f. Awarding Plaintiff and Class Members liquidated damages and/or statutory penalties as provided by law;

g. Awarding Plaintiff and Class Members such other and further relief as the Court deems just and proper.

JURY TRIAL DEMAND

Plaintiff, ABRAHAM FARAGOZA, and others similarly situated, demands a jury trial on all issues so triable.

Respectfully submitted this December 2, 2016.

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